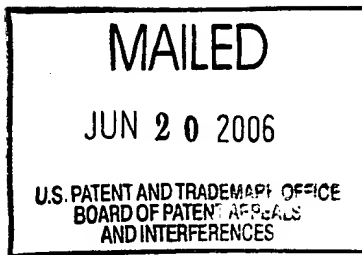


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MICHAEL SMITH,  
DAVID DIFFOR and ROBERT MILLER

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Application 09/309,396

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on June 16, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on December 13, 2005.

37 CFR § 41.37 states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

....

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented

by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing:

- 1) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

[www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html)

In addition, it is noted that the language of claim 1 in the Appendix to the Appeal Brief filed December 13, 2005 differs from its last amended version. 37 CFR § 41.37(c)(1)(viii) (2005) requires that the Appendix to the Appeal Brief contain a correct copy of the claims involved in the appeal.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for notification to appellants to submit a substitute Appeal Brief which includes the "Evidence Appendix" and the "Related Proceedings Appendix";
- 2) for notification to appellants to submit a corrected Appendix to replace the existing defective Appendix, or for the examiner to issue a revised Examiner's Answer officially correcting claim 1;
- 3) for consideration of the substitute Appeal Brief; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

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